

AMENDED IN ASSEMBLY AUGUST 15, 2008

AMENDED IN ASSEMBLY JUNE 24, 2008

AMENDED IN ASSEMBLY JUNE 12, 2008

AMENDED IN ASSEMBLY JUNE 5, 2008

AMENDED IN ASSEMBLY MAY 27, 2008

AMENDED IN SENATE JANUARY 14, 2008

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AMENDED IN SENATE APRIL 10, 2007

SENATE BILL

No. 509

Introduced by Senator Simitian

February 22, 2007

An act to add Article 6 (commencing with Section 108670) to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, relating to consumer product safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 509, as amended, Simitian. Consumer products:—~~content~~
disclosure: ingredient information.

Existing law regulates the labeling and use of various consumer products, including toys and toxic household products.

This bill, commencing January 1, ~~2009~~ 2010, would, *except when product ingredient information constitutes a trade secret, as defined*, prohibit the manufacture ~~or sale~~, *sale, or distribution* of a designated consumer product, as defined, unless the manufacturer discloses each

ingredient, *as defined*, contained in the product ~~in concentrations exceeding $\frac{1}{40}$ of 1%~~, by either (1) affixing a label on the product, or providing an information sheet accompanying the product at the time of sale, or (2) posting the information on the manufacturer's ~~Internet~~ Web site. The bill would ~~exclude from this prohibition a person engaged in the business of wholesale or retail distribution of a product. It would provide that a manufacturer shall have 45 days to correct an alleged failure to disclose one or more ingredients in a designated consumer product, upon receipt of written notification from a person claiming that the manufacturer failed to disclose that required ingredient information. The bill would permit the person providing that written notice to the manufacturer to bring a civil action against the manufacturer, in the event that a manufacturer fails to correct such an alleged failure to disclose the required product ingredient information within that 45-day period, and would prescribe specified civil penalties that may be recovered in such an action, except in cases where the civil action is filed to contest the designation of a product ingredient as a trade secret. The bill would permit a person, in a civil action contesting the designation of a product ingredient as a trade secret, to bring a civil action against the owner of the alleged trade secret information, and would prescribe specified civil penalties that may be recovered in such an action. The bill would further authorize the Attorney General to bring a civil action in the name of the people of this state against a manufacturer that has violated the above provisions.~~

The bill would declare that its provisions are severable, and if any provision of the bill is held invalid, that invalidity would not affect other provisions or applications that can be given effect without the invalid provision or application, and would provide that its provisions shall only be implemented to the extent permitted by federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 6 (commencing with Section 108670) is
- 2 added to Chapter 5 of Part 3 of Division 104 of the Health and
- 3 Safety Code, to read:

Article 6. Consumer Product Content Information

108670. The Legislature finds and declares all of the following:

(a) The federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.; the federal act) was enacted with the purpose of protecting the public against unreasonable risks of injury associated with consumer products, by assisting consumers in evaluating the comparative safety of consumer products, and developing uniform safety standards for those products.

(b) The federal act generally defines the term “consumer product” as a product produced or distributed for sale to a consumer for use in or around a household, a school, in recreation, or otherwise, but excludes certain items, including tobacco, motor vehicles, pesticides, drugs, devices, or cosmetics, and food.

(c) The state is aware of, and appreciates, the regulatory regime established by the federal act, but the federal act does not fully regulate the chemical exposure risks posed by many consumer products.

(d) The federal act provides that if a consumer product safety standard applies to a risk of injury associated with a consumer product, a state is prohibited from establishing a safety standard or regulation that deals with the same risk of injury associated with that consumer product.

(e) However, the federal act allows a state to impose safety requirements that are more stringent than federal standards, if the state standard is designed to protect against a risk of injury associated with a consumer product and if the state standard provides a higher degree of protection from that risk than the federal standard.

(f) The informational requirements of this article would impose additional safety requirements that do not deal with the same risk of injury for consumer products that is associated with existing consumer product safety standards under the federal act or that are more stringent than the federal standards and provide a higher degree of protection from risk.

(g) *It is the intent of the Legislature to consider whether future methods for the identification, disclosure, and labeling of fragrances should be explored.*

(h) *The nomenclature for ingredients in consumer products is governed by a number of voluntary and mandatory systems. It is*

1 *the intent of the Legislature to consider the creation of a publicly*
2 *accessible database that would provide compatible information.*

3 108671. For purposes of this article, the following definitions
4 shall apply:

5 (a) “Consumer product” has the same meaning as defined in
6 paragraph (1) of subdivision (a) of Section 2052 of Title 15 of the
7 United States Code, as that section read on January 1, 2008.

8 ~~(a)~~

9 (b) “Designated consumer product” means any product included
10 in the following categories:

11 (1) “Air care product” which means a chemically formulated
12 consumer product designed to ~~affect indoor~~ *freshen, clean, scent,*
13 *or deodorize the air, or mask unwanted odors in the air.*

14 (2) “Automotive product” which means a chemically formulated
15 consumer product designed to maintain the appearance of a motor
16 vehicle. “Automotive product” *does not include automotive paint*
17 *or paint repair products.*

18 (3) “Cleaning product” which means a soap, detergent, or other
19 chemically formulated ~~product designed for personal hygiene;~~
20 *consumer product designed for fabric care, dish or other ware*
21 *washing, or surface cleaning.*

22 (4) “Polish or floor maintenance product” which means a
23 chemically formulated consumer product such as polish, wax, or
24 a restorer, designed to polish, protect, or maintain furniture, floors,
25 metal, leather, or other surfaces.

26 ~~(b) “Manufacturer” means a person or entity that manufactures~~
27 ~~a designated consumer product in this state.~~

28 (c) “Functional class descriptor” *means a generic term*
29 *describing the functional role of a subset of chemicals that perform*
30 *a specific function within a designated consumer product sold to*
31 *a consumer.*

32 (d) “Ingredient” *means a constituent or chemical in a*
33 *designated consumer product knowingly added to the final product*
34 *prior to the time the product is sold in this state.*

35 (e) “Manufacturer” *means a person or entity that manufactures*
36 *a designated consumer product that is sold in this state.*

37 (f) “Trade secret” *has the same meaning as that term is*
38 *described in subdivision (d) of Section 6254.7 of the Government*
39 *Code.*

1 108672. (a) Commencing January 1, ~~2009~~ 2010, no designated
2 consumer product may be manufactured ~~or sold~~, sold, or otherwise
3 distributed in this state unless each ingredient contained in the
4 product in concentrations exceeding one-tenth of 1 percent is
5 disclosed by the manufacturer by either of the following methods:

6 (1) By affixing a label on the product, or providing an
7 information sheet accompanying the product at the time of sale
8 that lists the product ingredients.

9 (2) By posting the product ingredient information on the
10 manufacturer's Internet Web site.

11 (b) The prohibition contained in subdivision (a) shall not apply
12 to a person engaged in the business of wholesale or retail
13 distribution of a designated product.

14 (c) Nothing in this section shall be interpreted to require the
15 seller of a product to which this article applies to take any action
16 with respect to the disclosure of the product's ingredients.

17 ~~108673. The provisions of this article are severable. If any~~
18 ~~provision of this article or its application is held invalid, that~~
19 ~~invalidity shall not affect other provisions or applications that can~~
20 ~~be given effect without the invalid provision or application.~~

21 ~~108674. This article shall only be implemented to the extent~~
22 ~~permitted by federal law.~~

23 108673. *Ingredients in a designated consumer product shall*
24 *be identified by the International Nomenclature Cosmetic*
25 *Ingredient (INCI) name, the International Union of Pure and*
26 *Applied Chemistry (IUPAC) name, the Chemical Abstract Service*
27 *(CAS) name, or the common chemical name.*

28 108674. *For purposes of this article, a manufacturer shall not*
29 *be required to disclose information treated by the manufacturer*
30 *as a trade secret, unless that information is otherwise required to*
31 *be publicly disclosed under another law of this state, has been*
32 *publicly disclosed by the manufacturer, or has been lawfully*
33 *disclosed by a governmental entity. A manufacturer shall indicate*
34 *the existence of trade secret information in the disclosure required*
35 *under Section 108672 by identifying that information using a*
36 *functional class descriptor name.*

37 108674.1. (a) *A manufacturer shall have 45 days to correct*
38 *an alleged failure to disclose one or more ingredients in a*
39 *designated consumer product as required under Section 108672,*

1 upon receipt of written notification from a person claiming that
2 the manufacturer failed to disclose that ingredient information.

3 (b) In the event the manufacturer does not correct such a failure
4 to disclose product ingredient information within the 45-day time
5 period, the person providing the manufacturer with written
6 notification of the alleged nondisclosure of information may bring
7 a civil action against the manufacturer of the designated consumer
8 product, except in cases where the civil action is filed to contest
9 the designation of a product ingredient as a trade secret. In a case
10 contesting the designation of product ingredient information as a
11 trade secret, a person may bring a civil action against the owner
12 of the alleged trade secret information to contest the validity of
13 that claim in a court of law.

14 (c) In a civil action filed to contest the designation of a product
15 ingredient as a trade secret, the court may impose a civil penalty,
16 not to exceed twenty-five thousand dollars (\$25,000) on the party
17 asserting that the ingredient information is a trade secret, if the
18 court finds that the ingredient information does not meet the
19 definition of a trade secret, as defined in subdivision (f) of Section
20 108671. In assessing a penalty under this section, the court shall
21 take into account all relevant circumstances, including, but not
22 limited to, all of the following:

23 (1) The compliance history of the defendant, including the
24 frequency of past violations.

25 (2) The nature and persistence of the violation.

26 (3) The efforts of the defendant to attain, or provide for,
27 compliance with the requirements of this article.

28 (4) The degree of cooperation of the defendant during the course
29 of the court proceedings, and any action taken by the defendant,
30 including the nature, extent, and time of response of any action
31 taken to mitigate the violation.

32 (5) The defendant's total assets, liabilities, and net worth.

33 (d) When a civil penalty is imposed under subdivision (c), the
34 court may impose an additional penalty, not to exceed fifty
35 thousand dollars (\$50,000), if the court finds, on the basis of clear
36 and convincing evidence, that the party asserting that a product
37 ingredient is a trade secret willfully made the assertion with
38 knowledge of its falsity and with the specific intent to mislead
39 consumers.

1 108674.2. *In the event there is a substitution of an ingredient*
2 *in a designated consumer product, the disclosure required by this*
3 *article shall specify alternatives to any ingredients that may be*
4 *affected. An alternative ingredient shall be declared either:*

5 *(a) Immediately following the normally used ingredient for*
6 *which it substitutes, in which case it shall be identified as an*
7 *alternative ingredient by the word “or” following the name of the*
8 *normally used ingredient and any other alternative ingredient.*

9 *(b) Following the declaration of all normally used ingredients,*
10 *in which case the alternative ingredients in the group so listed*
11 *shall be identified as alternative ingredients by the phrase “may*
12 *also contain.”*

13 108674.3. *The Attorney General may bring a civil action in*
14 *the name of the people of this state against a manufacturer alleged*
15 *to have violated this article.*

16 108674.4. *The provisions of this article are severable. If any*
17 *provision of this article or its application is held invalid, that*
18 *invalidity shall not affect other provisions or applications that can*
19 *be given effect without the invalid provision or application.*

20 108674.5. *This article shall only be implemented to the extent*
21 *permitted by federal law.*